UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Petitioner, v. SALLY DAWN COBB, Respondent.	Case No. 08cv0997 IEG (CAB) ORDER GRANTING ENFORCEMENT OF INTERNAL REVENUE SERVICE SUMMONSES AND DENYING RESPONDENT'S MOTION TO QUASH

The government has petitioned the Court for an order enforcing Internal Revenue Service Summonses issued to Respondent Sally Dawn Cobb. On June 6, 2008, the Court issued an order to show cause why the IRS summonses should not be judicially enforced. On June 13, 2008, the IRS served a copy of the order to show cause upon Respondent. Respondent filed a response in opposition to the Petition to Enforce.

The hearing was held on the Government's petition and the Respondent's motion to quash on August 18, 2008, at 10:30 a.m. The IRS was represented by Assistant United States Attorney Raven M. Norris. Respondent appeared pro se. For the reasons explained herein, the Respondent's motion to quash is denied and the government's petition to enforce the summonses is granted.

BACKGROUND

From June 2007 to February 2008, Michael Delgado, a Revenue Agent employed by the Internal Revenue Service ("IRS") issued four IRS administrative summonses to Respondent Sally Dawn Cobb. The IRS is conducting an investigation regarding the personal tax liabilities of Ms. Cobb as well as the federal personal income tax liabilities of Respondent's brother, Michael A. Scott. [Declaration of Revenue Agent Michael Delgado, in Support of Petition, ("Delgado Decl."), ¶ 2.] The first two summonses, The Scott Angels Summons and the MAKDS Summons, were issued on June 8, 2007 to Respondent in her capacity as a trustee of an entities known as the Scott Angels Pure Trust and the MAKDS Pure Trust. The summonses related to the personal income tax liability of Michael A. Scott for the tax year 2001. [Delgado Decl., ¶3.] The third summons, the Dawn/Oasis Summons, was issued to Respondent on August 21, 2008 and related to the personal income tax liability of Respondent for tax year 2001. [Delgado Decl., ¶ 7.] The fourth summons, the Tapestry/Meadows Summons, was issued to Respondent on February 28, 2008 and related the tax liability of Respondent for tax years 2005 and 2006. [Delgado Decl., ¶ 11.] All summonses directed Respondent to appear before Revenue Agent Delgado by a certain date to provide testimony and produce for examination books, papers, records, or other data as described in the summonses or attachments to the summonses. [Delgado Decl., ¶¶ 6, 10, 13.] Revenue Agent Delgado served all four summonses on the Respondent by handing her an attested copy of each summons, in accordance with 26 U.S.C. § 7603. [Delgado Decl., ¶¶ 4, 8, 12.] Additionally, as required by Section 7609(a) of Title 26 of the United States Code, Revenue Agent Delgado served notice of the Scott Angels Summons, MAKDS Summons, and the Dawn/Oasis Summons to the third party noticees, Michael A. Scott and Kerry D. Scott, as identified in the summonses. [Delgado Decl., ¶¶ 5,9.] Neither noticee filed a proceeding to quash summonses. [Id.]

Respondent did not appear for any of the dates set by the summonses and did not provide Revenue Agent Delgado with any of the documents or testimony required by the summonses. [Delgado Decl., ¶¶ 6 , 10, 13.] Respondent has contacted Revenue Agent Delgado by sending letters stating that there was no filing requirement for the trust and no taxes were required for the trust. [Petition, ¶¶ 9, 17.] Each letter also included a copy of the issued summonses with a stamp mark "returned for fraud." [Delgado Decl., Ex. E.]

To date, Respondent has not complied with the summonses and has not provided any testimony or documents requested by the four summonses. While the IRS has received some documents from third party sources in response to subpoena or summons requests, documents and oral testimony from Respondent is still required and the books, papers, records, and other data sought by the summonses are not already in the possession of the Internal Revenue Service. [Petition, ¶ 18.]

On June 4, 2008, the Government petitioned the Court to enforce the summonses. On June 6, 2008, the Court set a hearing date for this matter and ordered Respondent to show cause why she should not be compelled to comply with the IRS summons. The IRS served the order to show cause on Respondent on June 13, 2008 and filed proof of service with the Court. On June 24, 2008, Respondent filed a motion to quash. The Government filed an opposition to the Motion on August 4, 2008. On August 18, 2008, a hearing was held on the Petition and Motion before this Court.

DISCUSSION

Pursuant to 26 U.S.C. § 7602(a)(1), the Secretary of the Treasury may "examine any books, papers, records, or other data which may be relevant or material" in connection with "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue. . . or collecting any such liability." Section 7602(a)(1) authorizes the Secretary to issue summonses to compel persons in possession of such books, papers, records, or other data to appear and produce the same and/or give testimony.

In order to obtain judicial enforcement of an IRS summons, the United States "must first establish its 'good faith' by showing that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose.; (3) seeks information that is not already within the IRS' possession; and (4) satisfies all administrative steps required by the United States Code." Fortney v. United States, 59 F.3d 117, 119(9th Cir. 1995) (citing United States v. Powell, 379 U.S. 48, 57-58(1964)). "The government's burden is a 'slight one' and typically is satisfied by the introduction of the sworn declaration of the revenue agent who issued the summons that Powell requirements have been met." Id. at 120. Once the government has made a prima facie showing that enforcement of the summons is appropriate, the burden shifts to the Respondent to show that enforcement of the summons would be an abuse of the court's process. Powell, 379 U.S. at 58. The Supreme Court has characterized respondent's burden as a heavy one. Id.

The government's petition and Revenue Agent's Delgado's supporting declaration satisfies all four elements of the Powell standard. First, the IRS is conducting investigations with respect to Respondent's income tax liability for tax years 2001, 2005, 2006 and Respondent's brother's income tax liability for tax year 2001. [Delgado Decl., ¶ 2 and 17]. Such investigations are expressly authorized by 26 U.S.C. § 7602(a). The Internal Revenue Code explicitly allows the issuance of summons for the purpose of determining "the liability of any person for any internal revenue tax...or collecting any such liability.." 26 U.S.C. § 7602(a). Thus, the summonses were issued for a legitimate purpose. Second, Revenue Agent Delgado has declared in his affidavit that the information requested by the summonses may be relevant to the IRS determination of Respondent's and Respondent's brother's personal tax liability. [Id., ¶ 13.] Third, the IRS does not already possess the papers, records, and other data sought by the summonses issued to Respondent. [Id., ¶ 15.] Finally, the IRS has followed and exhausted all required administrative steps, but Respondent has not complied with the summonses. [Id., ¶ 16.] Thus, the government has made a *prima facie* showing that it is entitled to judicial enforcement of the summons. There is no Department of Justice referral in effect regarding Ms. Cobb as described in 26 U.S.C. § 7602(d). [Id., ¶ 18.]

Once a *prima facie* case has been made, "a heavy burden falls on the taxpayer" to show an abuse of the court's process or lack of institutional good faith. Stewart v. United States, 511 F.3d 1251, 1255 (9th Cir. 2008); United States v. Dynavac, 6 F.3d 1407, 1414 (9th Cir. 1993). The taxpayer "must allege specific facts and evidence to support [her] allegations." Liberty Financial Services, 778 F.2d at 1392. Here, Respondent has failed to allege any facts or evidence that the issued IRS summonses were issued in bad faith or an abuse of court process. In her motion to quash, Respondent argues the IRS lacks jurisdiction over her because of her Private status as a non-taxpayer. [Motion to Quash, Doc. No. 7, p. 2.] Respondent argues the revenue laws apply only to taxpayers and not to non-taxpayers such as herself. Respondent also argues her family's Pure Trusts have foreign status and therefore have no tax filing requirements. [Id., p. 3.]

Congress has imposed a tax on the taxable income of every individual, whether married or single, as well as upon estates and trusts. 26 U.S.C. § 1(a) - (e). Congress has also granted the Secretary of the Treasury broad authority to discover and enforce individual income tax assessments.[1/] 26 U.S.C. § 7601 *et seq*. As relevant to this action, the statute provides as follows:

[1/] The IRS, as a delegate of the Secretary of Treasury, has the authority to issue summons to investigate a taxpayer's federal income tax liability. United States v. Derr, 968 F.2d 943, 945 (9th Cir. 1992).

> For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of **any person** for any internal revenue tax . . . the Secretary is authorized –
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
>
> * * *
>
> (3) To take such testimony **of the person** concerned, under oath, as may be relevant or material to such inquiry.

26 U.S.C. § 7602(a) (emphasis added).

Furthermore, Congress has given the district courts jurisdiction to hear petitions to enforce IRS summons. Pursuant to 26 U.S.C. § 7604(a), "[i]f **any person** is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which **such person** resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data." (Emphasis added). Both § 7602(a) and § 7604(a) give the IRS authority to seek information from "any person," and there is no requirement that the IRS first demonstrate that the individual has taxable income or is liable to pay a tax.

The Ninth Circuit has found that the payment of federal income taxes is not voluntary. In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989) (noting that the court "need comment on the patent absurdity and frivolity" of respondent's argument that the Constitution does not authorize Congress to implement an individual income tax); see also Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988) (rejecting taxpayer's arguments that payment of taxes is voluntary and that income tax violates the Constitution). The Ninth Circuit has also found the argument made by Respondent, that she is not a taxpayer, to be frivolous. United States v. Studley, 783 F.2d 934, 937 (9th Cir. 1985). Therefore, Respondent has failed to meet the burden of proof of showing an "abuse of process" or "the lack of institutional good faith." Fortney, 59 F.3d at 119, citing Dynavac, 6 F.3d 1407; Liberty Financial Services, 778 F.2d at 1393.

CONCLUSION

For the reasons set forth herein, the government's petition to enforce the IRS summons is GRANTED and Respondent's Motion to Quash is DENIED. Respondent, Sally Dawn Cobb, is directed to appear before IRS Revenue Agent Michael Delgado or designee, on September 22, at 9:00 a.m., at the offices of the Internal Revenue Service located at 1 Civic Center Drive, Suite 400, San Marcos, California, and to produce the documents and give testimony as directed in the summonses. The United States shall serve a copy of this Order upon Ms. Cobb in accordance with Fed. R. Civ. P. 5, within 7 days of the date that this Order is served upon counsel for the United States, or as soon thereafter as possible. Proof of such service shall be filed with the Clerk of Court as soon as practicable.

Respondent is hereby notified that failure to comply with this Order may subject her to sanctions for contempt of court.

IT IS SO ORDERED

DATED: August 19, 2008

IRMA E. GONZALEZ, Chief Judge
United States District Court